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INTERSTATE COMMERCE COMMISSION

Conditional Sale Agreement

Dated as of July 15, 1975

AMONG

PULLMAN INCORPORATED
(Pullman-Standard Division)

**CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,**
as Trustee

AND

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of July 15, 1975 among the corporation named in Annex A hereto (hereinafter called the Vendor or Builder as more particularly set forth in Article 1); CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the Vendee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with CHEMICAL BANK and INTERNATIONAL PAPER EQUIPMENT LEASING CORPORATION (hereinafter called collectively the Beneficiaries and individually a Beneficiary); and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY (hereinafter called the Lessee).

WHEREAS, the Builder has agreed to construct, sell and deliver to the Vendee, and the Vendee has agreed to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, the Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), substantially in the form of Annex C hereto, with the Lessee, and the Lessee is willing to provide for the payment to the Builder of certain sums and has joined in this Agreement for the purpose of setting forth the terms and conditions of such payment and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Assignment; Definitions.* The parties hereto contemplate (subject to the limitations set forth in the third paragraph of Article 3 and the first paragraph of Article 4) that the Vendee will furnish that portion of the purchase price for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 and that an amount equal to the balance of such purchase price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) between the Builder and Continental Illinois National Bank and Trust Company of Chicago, as Agent (hereinafter, together with its successors and assigns, called the Assignee) under

a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Vendee, the Lessee, the Beneficiaries and the Investors named in Annex A thereto.

The term "Vendor," whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any such assignment; and the term "Builder," whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business. In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, titles and interests of the Vendee in and to the Lease pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment), substantially in the form of Annex D hereto. The term "Other Agreement," whenever used in this Agreement, means the Conditional Sale Agreement dated as of the date hereof described in Item 5 of Annex A hereto.

Additional agreements, if any, set forth in Annex A hereto shall be deemed to be a part of this Agreement as fully as though set forth in this Agreement.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for as hereinafter provided, the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery thereof, to all United States

Department of Transportation and Interstate Commerce Commission requirements and standards for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units; and each such unit will be new railroad equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Vendee at the place specified in Annex B hereto, or at such place as the Builder, the Vendee and the Lessee shall agree, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; *provided, however*, that delivery of any unit of the Equipment shall not be made (i) until this Agreement and the Lease shall have been filed pursuant to Section 20c of the Interstate Commerce Act, (ii) until payment for such unit shall have been made as provided in Article 4 and the Assignment and (iii) if an event of default hereunder shall have occurred and be continuing.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for on or before the Cut-Off Date (as defined in Article 4) shall be excluded from this Agreement and not included in the term "Equipment." In the event of any such exclusion, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom; and if the Builder's failure to deliver the Equipment so excluded resulted from one or more of the causes set forth in the immediately preceding paragraph, the Lessee shall be obligated to purchase such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder. Such payment shall be in cash on the delivery of such Equipment, either directly or, if the Builder and the Lessee shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Concurrently with the payment for each Group (as hereinafter defined) of the Equipment as provided in Article 4 and the Assignment, the units in such Group shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver, on the applicable Closing Date (as hereinafter defined), to the Builder a certificate of acceptance (hereinafter called a Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9; *provided, however*, that the Builder shall not thereby be relieved of its indemnities and warranties referred to in Article 13.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however*, that the Builder shall not thereby be relieved of its indemnities and warranties referred to in Article 13.

ARTICLE 4. *Purchase Price and Payment.* The current price per unit of the Equipment is set forth in Annex B hereto. Such current price is subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" shall mean the current price as so increased or decreased and may include freight and storage charges (provided that the aggregate amount of freight and storage charges so included under this Agreement and the Other Agreement shall not exceed \$150,000). If on any Closing Date (as hereinafter defined in this Article 4) the aggregate invoiced Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement and the Other Agreement would, but for the provisions of this sentence, exceed \$11,660,000 (or such greater amount as the Vendee with the consent of the Lessee may at its option agree to), the Builder (and any assignee of the Builder) and the Lessee will, upon request of the Vendee, enter into an

agreement excluding from this Agreement or the Other Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate invoiced Purchase Price under this Agreement and the Other Agreement to not more than \$11,660,000 (or such greater amount as aforesaid). The Lessee agrees to purchase any unit or units of Equipment so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement, either directly or, if the Builder and the Lessee shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date, not earlier than September 25, 1975 and not later than July 1, 1976 (such later date being hereinafter called the Cut-Off Date), occurring not more than 10 Business Days following presentation by the Builder to the Vendee of the invoice for such Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee, the Assignee and the Builder at least six Business Days prior to the Closing Date designated therein. The term "Business Days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Chicago, Illinois are authorized or obligated to remain closed.

Subject to the provisions of the final paragraph of this Article 4, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) On the Closing Date with respect to each Group, an amount equal to 35.5% of the aggregate Purchase Price of such Group; and
- (b) In 25 consecutive semi-annual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (hereinafter called the Conditional Sale Indebtedness) shall be payable on January 1 and July 1 of each year, commencing January 1, 1977 and terminating January 1, 1989 (or if any such date is not a Business Day, on the next succeeding Business Day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of 9½% per annum and such interest shall be payable, to the extent accrued, on January 1 and July 1 of each year, commencing January 1, 1976. The installments of Conditional Sale Indebtedness payable on each Payment Date shall be calculated so that the aggregate of Conditional Sale Indebtedness and interest payable on each Payment Date shall be substantially equal and such installments shall completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of Conditional Sale Indebtedness and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

Subject to the provisions of the final paragraph of this Article 4, the Vendee will pay interest, to the extent legally enforceable, at the rate of 10½% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in immediately available funds. Except as provided in Article 7, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to any Group is specifically subject to the fulfillment, on or before the Closing Date in respect of such Group, of the following conditions (any of which may be waived by the Vendee, and payment by the Vendee

of the amount specified in subparagraph (a) of such third paragraph with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived):

(a) the Assignee shall have paid or caused to have been paid to the Builder the amounts contemplated to be paid by it as provided in Article 1 and in the Assignment and the documents required by the Assignment shall have been delivered;

(b) no event of default specified herein or Event of Default of the Lessee under the Lease, nor any event which, with notice, demand and/or lapse of time provided for herein or in the Lease, would constitute such an event of default or Event of Default shall have occurred and be continuing; and

(c) the Vendee shall have received the opinions, certificates and other instruments required by Section 5 of the Assignment.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article 4, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" as hereinafter defined, and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) in so far as it relates to the Lessee or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnity

ties, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Vendee, the Lessee and the Equipment and to the Vendee's rights under the Lease against the Lessee and the Equipment. As used herein, the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 shall have occurred and while it shall be continuing, so much of the following amounts as are free and clear of all claims and liens by, through or under the Lessee received by the Vendee or the Assignee at any time after any such event of default and during the continuance thereof: (a) all amounts of rental (other than payments owing the Vendee or the Beneficiaries pursuant to Sections 6, 7 (with respect to public liability insurance), 9 and 17 of the Lease which shall be made directly to the Vendee or the Beneficiaries, as the case may be) and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7) paid for or with respect to the Equipment pursuant to the Lease, (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (c) any and all other payments received by the Vendee or any assignee of the Vendee under Section 10 of the Lease; and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) as are free and clear of all claims and liens by, through or under the Lessee received by the Vendee or the Assignee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within six days after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid over pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a), (b) and (c) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default and which exceeded the amounts required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within six days after, the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid over pur-

suant to the Lease plus any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest thereon and for all other payments and obligations hereunder. Notwithstanding anything contained in Article 15 or Article 16, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee on account of the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable within the limitations set forth in this paragraph.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement. Any and all additions to the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Equipment, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor; however, the Vendor, if so requested by the Vendee, will (a) execute a bill or bills of sale for the Equipment transferring its security title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or which result from claims against the Vendor not related to the ownership of the Equipment or the performance of the Vendor's duties and responsibilities under this Agreement or any instrument referred to herein, and deliver such bill or

bills of sale to the Vendee at its address referred to in Article 20, (b) execute and deliver at the same place, for filing, recording, registering or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments within a reasonable time after written demand by the Vendee.

ARTICLE 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon receipt of such payments, excess profits taxes and similar taxes), certification, registration and license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement, or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, certification, registration and license fees, assessments, charges, fines and penalties being hereinafter called collectively Impositions), all of which Impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Vendee shall be under no obligation to pay any Imposition so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Imposition shall have been charged or

levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, together with interest thereon at the rate of 9½% per annum from the date of such payment to the date of reimbursement, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Vendee shall not be obligated to reimburse the Vendor for any Imposition so paid unless the Vendor shall have been legally liable with respect thereto, unless the Vendee shall have received an opinion of counsel for the Vendor, which counsel is satisfactory to the Vendee, to such effect or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. *Maintenance; Casualty Occurrences; Insurance.* The Vendee, at its own cost and expense, shall maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall become worn out, lost, stolen, destroyed, irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or otherwise, except any requisition for use by the United States Government for a period ending on or prior to the termination of the Lease (such occurrences being hereinafter called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. When any unit of the Equipment shall have suffered a Casualty Occurrence, the Vendee shall pay to the Vendor, on the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit or units as of the Casualty Payment Date and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or units. Any money paid to the Vendor pursuant to this paragraph or received as the proceeds of insurance maintained in accordance with this Article 7 shall be applied to prepay, without penalty or premium, ratably in accordance with the unpaid balance thereof, each installment of the Conditional Sale Indebtedness, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of installments of Conditional Sale Indebtedness and interest thereafter to be made, in such number of counterparts as the Assignee may request, calculated as provided in the fourth paragraph of Article 4.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, ab-

solute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor; however, the Vendor, if so requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, a bill of sale for such unit transferring the Vendor's security title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or which result from claims against the Vendor not related to the ownership of the Equipment or the performance of the Vendor's duties and responsibilities under this Agreement or any instrument referred to herein.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 7). For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

The Lessee will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained property insurance in respect of the Equipment and public liability insurance, all as provided in the Lease.

Any insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor pursuant to the second paragraph of this Article 7. If the Vendor shall receive any other insurance proceeds in respect of such units after the Vendee shall have made payment pursuant to this Article 7 without deduction for such insurance proceeds, the Vendor shall pay such insurance proceeds to the Vendee. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon receipt by the Vendor of a certificate signed by an authorized officer of the Lessee to the effect that any damage to the unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. *Reports and Inspections.* On or before March 31 in each year, commencing with the year 1976, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded, registered and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded, registered and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be inter-

puted as a claim of ownership; *provided, however*, that the Equipment may be lettered with the name or initials or other insignia customarily used by the Lessee, the Vendee or any Beneficiary.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will cause every user of the Equipment to comply, in all respects with all laws (including, without limitation, laws with respect to the use, maintenance and operation of the Equipment) of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment; and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; *provided, however*, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall at all times be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however*, that so long as the Lessee shall not be in default under the Lease or under this Agreement, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the Lease. The Lessee acknowledges and agrees to the

subordination of the Lease as provided in the next preceding sentence. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under the Lease until the Vendor shall have received notice in writing of the Vendee's intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by the Vendee upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended, modified or terminated (except in accordance with its express terms) without the prior written consent of the Vendor.

The Vendee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to such conditions as the Vendor shall specify, including that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security title therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; *provided, however*, that the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security title of the Vendor in or to the Equipment or otherwise adversely affect its rights under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges, security interests or other encumbrances upon the Equipment shall be secured by and under this Agreement.

This covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so

long as not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or arising out of the transfer of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties hereto with respect to the Builder's warranties and patent indemnities are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. *Assignments.* The Vendee will not (a) except as provided in Article 11, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this

Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Lessee) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Lessee hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13, or relieve the Vendee or the Lessee of their respective obligations to the Builder under Articles 2, 3, 4, 6 and 13, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any assignment or reassignment referred to in the immediately preceding paragraph, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Lessee, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Lessee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and the Lessee recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee and the Lessee expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all

or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor, as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment, or the manufacture, construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, indebtedness or liability, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

In the event of any such assignment by the Vendor, the Vendee and the Lessee will (a) in connection with each settlement for a Group of Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Group, all documents required by the terms of such assignment to be delivered by each of them, respectively, to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on any Closing Date the full Purchase Price in respect of all of the Equipment proposed to be delivered, accepted and settled for on such Closing Date, the Builder will promptly notify the Vendee and the Lessee of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement excluding from this Agreement those units of Equipment for which the full Purchase Price shall not have been received, and the Lessee will accept delivery of such units and will, not later than 45 days after such Closing Date, pay or cause to be paid to the Builder the unpaid Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Lessee at the highest prime rate of interest of leading Chicago banks in effect on such Closing Date.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee), and such default shall continue for 10 days;

(b) the Vendee shall, for more than 30 days after the Vendor shall have demanded performance thereof by written notice to the Vendee and the Beneficiaries, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing or lease of the Equipment, on the part of the Vendee to be kept or performed or to make provision satisfactory to the Vendor for such compliance;

(c) the Lessee shall, for more than 30 days after the Vendor shall have demanded performance thereof by written notice to the Lessee, the Vendee and the Beneficiaries, fail or refuse to comply with Paragraph 19(a) of the Finance Agreement, any covenant, agreement, term or provision of this Agreement intended for the benefit of the Assignee or of any agreement entered into concurrently herewith relating to the financing or lease of the Equipment and intended to fulfill the obligations of the Vendee hereunder, or to make provision satisfactory to the Vendor for such compliance, and neither the Vendee nor the Beneficiaries shall have made such provision;

(d) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

(e) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee or the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or the Lessee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Lessee, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(f) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;
or

(g) an event of default shall occur under the Other Agreement;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 11, cause the Lease immediately (upon such notice) to terminate (and the Vendee and the Lessee each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and

thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated, subject to the provisions of the last paragraph of Article 4 and Article 21. The Vendee or the Lessee, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with notice, demand and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Lessee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 11, and in compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from the possession and use of the Vendee, the Lessee or any other person having such possession and use and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located

and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee.

In case the Vendor shall rightfully demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee and the Lessee shall (subject to the rights of the Lessee set forth in Article 11), at their own expense, forthwith and in the usual manner (including giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause the Equipment to be moved to such point or points and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment, at the expense of the Lessee, on any lines of railroad or premises as the Vendor reasonably may designate until the Vendor shall have leased, sold or otherwise disposed of the same, and the Vendee and the Lessee, at their expense, shall then cause the Equipment so leased, sold or disposed of to be moved to such interchange point or points as the Vendor shall direct. During any period of storage, the Vendor, the Vendor's representatives and prospective purchasers shall be entitled to inspect the Equipment. The agreement to deliver and store the Equipment as hereinbefore provided (and permit inspection thereof) is of the essence of this Agreement, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Lessee requiring specific performance thereof. The Vendee and the Lessee hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in

Article 20, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Lessee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Vendee, before the expiration of the 30-day period described in the next proviso, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid (but without premium) and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; and *provided further*, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall, at the Vendor's option, sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession of the Equipment, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 11, sell the Equipment, or one or more units thereof, free from any and all claims of the Vendee, the Lessee or any other person claiming from, through or under the Vendee or the Lessee at law or in equity, at public or private sale and with or without advertisement, as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid (but without premium) and all other payments due under this Agreement, as well as the expenses of the Vendor in retaking possession of, removing, storing,

holding and preparing the Equipment for, and otherwise arranging for, such sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of any sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Chicago, Illinois or at such other place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee, the Lessee and all other persons to whom the law requires notice shall be given written notice of such sale not less than 30 days prior thereto, by telegram or registered mail, addressed as provided in Article 20. If such sale is to be a private sale, it shall be subject to the rights of the Vendee and the Lessee to purchase or provide a purchaser, within 10 days after receipt of written notice of such private sale, at the same price offered by the intending purchaser or a better price. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

At any time during the continuance of a Declaration of Default, the Vendor will give each Beneficiary prior written notice of each of the following: (i) the institution by the Vendor of any proceeding for a judgment or decree for the sale or re-lease of the Equipment or for payment of the amount then due in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement; or (ii) its intention to retake possession of any of the Equipment or to sell or re-lease any of the Equipment pursuant to any power granted hereunder or under the Lease. Upon receipt of such

written notice, or upon the occurrence of an event of default arising out of any action by or against the Lessee described in clause (d) or (e) of Article 15, the Beneficiaries shall have the right, within 15 Business Days after the receipt of such notice, or within 60 Business Days of such event of default, as the case may be, to pay all (but not less than all) of the amount then owing in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid, but otherwise without premium, plus all other amounts due under this Agreement.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy, and no renewal or extension of any payments due hereunder, shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Lessee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Lessee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand; and if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the provisions of the last paragraph of Article 4, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Lessee, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 17. *Applicable Laws.* Any provision of this Agreement prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Lessee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Lessee, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. *Recording.* The Vendee or the Lessee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee and the Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the

purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee or the Lessee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Lessee hereunder with respect to the Equipment and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Lessee.

ARTICLE 20. *Notices.* Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally or if mailed, certified mail postage prepaid, at the following specified addresses:

(a) To the Builder, at the address specified in Item 1 of Annex A hereto;

(b) To the Assignee, 231 South LaSalle Street, Chicago, Illinois 60693, attention of Corporate Trust Department;

(c) To the Vendee, 231 South LaSalle Street, Chicago, Illinois 60693, attention of Corporate Trust Department, with copies to each Beneficiary at its respective address set forth in the Trust Agreement;

(d) To the Lessee, 3253 East Trafficway, Springfield, Missouri 65802, attention of Vice President-Finance, with a copy to 906 Olive Street, St. Louis, Missouri 63101, attention of Secretary;

(e) To any other assignee of the Vendor or of the Vendee, at such address as may have been furnished in writing to the parties hereto by such assignee;

or to such other address as may have been furnished in writing by such person to the other persons named above.

ARTICLE 21. *Immunities of Certain Individuals; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendee, the Beneficiaries, the Builder (or the Vendor) or the Lessee, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision or statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 7, the second paragraph of Article 16 and under Articles 6, 8, 9, 10, 12, 13 and 18 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto that, anything herein to the contrary notwithstanding: (i) each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally, but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement); (ii) this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as Trustee under the Trust Agreement; and (iii) no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Ven-

dee or the Beneficiaries on account of any representation, undertaking or agreement of the Vendee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under the Vendor may look to the Trust Estate for satisfaction of the same. Nothing herein contained shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Vendee (provided that neither the Vendee in its fiduciary or individual capacity nor the Beneficiaries shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Vendee or the Beneficiaries) or, subject to the terms and conditions of the Lease, to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Lessee under the Lease.

ARTICLE 22. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Agreement or of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited.

ARTICLE 23. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of July 15, 1975 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

PULLMAN INCORPORATED
(Pullman-Standard division)

By *Thomas Glaser*
Vice President

(CORPORATE SEAL)

Attest:

William O'Driscoll
Assistant Secretary

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF
CHICAGO

By *[Signature]* as Trustee
Second Vice President

(CORPORATE SEAL)

Attest:

Dennis Hard
Trust Officer

ST. LOUIS-SAN FRANCISCO RAILWAY
COMPANY

By *[Signature]*
Vice President

(CORPORATE SEAL)

Attest:

[Signature]
Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 26th day of September, 1975, before me personally appeared Thomas R. Rose to me personally known, who, being by me duly sworn, says that he is a Vice President of Pullman Incorporated (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... William L. Zerk
Notary Public

(NOTARIAL SEAL)

My commission expires May 7, 1978

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 26th day of September, 1975, before me personally appeared A. E. Wolf, JR. to me personally known, who, being by me duly sworn, says that he is a Second Vice President of Continental Illinois National Bank and Trust Company of Chicago, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... W. B. Bull
Notary Public

(NOTARIAL SEAL)

My commission expires NOVEMBER 16, 1977

STATE OF MISSOURI }
 CITY OF ST. LOUIS } ss

On this ^{27th} day of September, 1975, before me personally appeared
 D. E. Engle, to me personally known, who, being by me
 duly sworn, says that he is a Vice President of St. Louis-San Francisco
 Railway Company, that one of the seals affixed to the foregoing in-
 strument is the corporate seal of said corporation and that said in-
 strument was signed and sealed on behalf of said corporation by authority
 of its Board of Directors, and he acknowledged that the execution of the
 foregoing instrument was the free act and deed of said corporation.

James J. Harker

 Notary Public

(NOTARIAL SEAL)

My Commission Expires

June 30, 1976

**Annex A to
Conditional Sale Agreement
PULLMAN INCORPORATED
(Pullman-Standard division)**

- Item 1: PULLMAN INCORPORATED (Pullman-Standard division), a Delaware corporation, having an address at 200 South Michigan Avenue, Chicago, Illinois 60604.
- Item 2: The Equipment shall be settled for in one Group of units of Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. **The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities except under Articles 2, 3 and 4 of the Agreement and Item 4 of this Annex A, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.**

The Builder further agrees with the Lessee and the Vendee that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Lessee or the Vendee of any of their rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Lessee, the Beneficiaries and the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessee, the Beneficiaries, the Vendee, their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Lessee likewise will indemnify, protect and hold harmless the Vendor, the Beneficiaries and the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, the Beneficiaries or the Vendee because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee more fully to effectuate the assignment

and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee, the Beneficiaries and the Vendee of any claim known to the Builder from which liability may be charged against the Lessee, the Beneficiaries or the Vendee hereunder and the Lessee will give notice to the Builder, the Beneficiaries and the Vendee of any claim known to the Lessee from which liability may be charged against the Builder, the Beneficiaries or the Vendee hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under the Agreement, the satisfaction and discharge of the Agreement or the termination of the Agreement in any manner.

Item 5: Conditional Sale Agreement dated as of July 15, 1975 among Greenville Steel Car Company, the Vendee and the Lessee.

**Annex B to
Conditional Sale Agreement**

**PULLMAN INCORPORATED
(Pullman-Standard division)**

Type	Builder's Specification Number	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Current Price Per Unit	Estimated Total Purchase Price	Estimated Time of Delivery
100-ton gondola cars	3258 dated January 17, 1974 and revised February 1, 1974	Butler, Pa.	200	SL-SF 66000- 66199	\$27,000	\$5,400,000	Sept.-Oct., 1975

Lease of Railroad Equipment

Dated as of July 15, 1975

BETWEEN

CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY OF CHICAGO,

as Trustee

AND

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT dated as of July 15, 1975 between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with CHEMICAL BANK and INTERNATIONAL PAPER EQUIPMENT LEASING CORPORATION (hereinafter called collectively the Beneficiaries and individually a Beneficiary), and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into Conditional Sale Agreements dated as of the date hereof (hereinafter called the Conditional Sale Agreements) with Pullman Incorporated (Pullman-Standard division) and Greenville Steel Car Company, respectively (hereinafter called the Builders), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Lessor of the railroad equipment described in Annex A hereto (hereinafter called the Equipment);

WHEREAS, each of the Builders and Continental Illinois National Bank and Trust Company of Chicago, as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Lessor, the Lessee, the Beneficiaries and the Investors named in Annex A thereto (hereinafter, together with their successors, assigns and transferees, called the Investors), have entered into an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignments) assigning to the Assignee the right, security title and interest of each Builder under its respective Conditional Sale Agreement as security for the payment of the aggregate Conditional Sale Indebtedness (as defined in the Conditional Sale Agreements);

WHEREAS, the Lessee desires to lease all the units of the Equipment, or such lesser number as are delivered, accepted and settled for under the Conditional Sale Agreements, at the rentals, for the terms and upon the conditions hereinafter stated (such number of units as are delivered, accepted and settled for under the Conditional Sale Agreements being hereinafter called the Units); and

WHEREAS, in order to provide further security for the payment of the aggregate Conditional Sale Indebtedness and as an inducement to the In-

vestors to invest in the Conditional Sale Indebtedness, the Lessor will, concurrently with its execution and delivery of this Lease, enter into an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) with the Assignee assigning for security purposes certain of its rights in, to and under this Lease to the Assignee;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

SECTION 1. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or against the Lessor or the Vendor under the Conditional Sale Agreements, including the Lessee's rights by subrogation thereunder to the Builders or the Assignee or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof.

Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 2. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessee as its agent for the inspection and acceptance of, and the approval of all invoices relating to, the Units pursuant to the Conditional Sale Agreements and the Assignments. The Lessor will cause each Unit to be delivered to the Lessee on the Closing Date (as defined in the applicable Conditional Sale Agreement) therefor under such Conditional Sale Agreement at the point or points within the United States of America at which such Unit is delivered to the Lessor under such Conditional Sale Agreement. Upon such delivery, the Lessee will cause an employee of the Lessee or an authorized representative of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor and the appropriate Builder a certificate of acceptance (hereinafter called a Certificate of Acceptance), in accordance with the provisions of Article 3 of such Conditional Sale Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 5, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee hereunder, shall (without limiting Section 9) as between the Lessor and the Lessee be conclusively presumed to comply with the specifications, requirements and standards applicable thereto pursuant to such Conditional Sale Agreement and to be in good working order and repair without inherent vice or defect in title, condition, design, operation or fitness for use and shall thereafter be subject to all the terms and conditions of this Lease.

SECTION 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, a payment on the Cut-Off Date (as defined in the Finance Agreement) and 32 consecutive semi-annual payments on January 1 and July 1 in each year, commencing January 1, 1976. The rental payment due on the Cut-Off Date shall be in an amount equal to the sum of the amounts required by the Lessor to make the payment provided for in the last sentence of the fourth paragraph of Paragraph 1 and in clause (a) of the last paragraph of Paragraph 4 of the Finance Agreement, whether or not any Units have been delivered to the Lessee hereunder.

The rental payments due on January 1, 1976 and July 1, 1976 shall each be in an amount equal to the sum of (i) .027778% of the Purchase Price (as defined in the Conditional Sale Agreements) of each Unit then subject to this Lease for each day (computed on the basis of a 365-day year) elapsed from the Closing Date for such Unit or the next preceding rental payment date, as the case may be, to and including the date of such payment, and (ii) the amount required by the Lessor to make the payments provided for in clause (b) of the last paragraph of Paragraph 4 of the Finance Agreement. The next 30 semi-annual rental payments shall each be in an amount equal to 4.835% of the Purchase Price of each Unit then subject to this Lease.

In the event that any Unit is delivered, accepted and settled for after September 30, 1975, then the rental payments hereinbefore set forth and the Casualty Values set forth in Section 7 shall be increased by such amounts as shall (a) in the reasonable opinion of the Beneficiaries, cause the Beneficiaries' net after-tax annual cash flows and net after-tax rates of return to be at least the same as such cash flows and rates of return would have been had such Unit been delivered, accepted and settled for on or prior to September 30, 1975, and (b) cause the excess of the aggregate of the amounts payable on January 1, 1976 and July 1, 1976 pursuant to clause (i) of the first sentence of the preceding paragraph over the aggregate of the amounts payable on such dates under Article 4 of the Conditional Sale Agreements to be not less than 2.744% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to Sections 9 and 17.

If any of the semi-annual rental payment dates referred to above is not a Business Day (as defined in Article 4 of the Conditional Sale Agreements) the semi-annual rental payment otherwise payable on such date shall be payable on the next succeeding Business Day.

The Lessor irrevocably instructs the Lessee to make all the payments (other than payments owing to the Lessor or the Beneficiaries pursuant to Sections 6, 7 (with respect to public liability insurance), 9 and 17 or payments due or becoming due after the obligations of the Lessor under the Conditional Sale Agreements have been fully satisfied, which shall be made directly to the Lessor) provided for in this Lease at the principal

office of the Assignee, for the account of the Lessor, in care of the Assignee, with instructions to the Assignee first to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreements known to the Assignee to be due and payable on the date such payments are due and payable hereunder and second, so long as no event of default under the Conditional Sale Agreements and no Event of Default hereunder shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing, unless and until the Lessor shall otherwise direct the Assignee in writing. The Lessee further agrees that no payments shall be made to the Lessor or the Beneficiaries pursuant to Sections 6, 9 and 17 unless concurrently therewith the Lessee shall pay to the Assignee, for the account of the Lessor, all amounts which are then due to the Lessor under the provisions of this Lease; and the making of such concurrent payment is of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Assignee shall be entitled to a decree against the Lessee requiring specific performance of the same.

The Lessee agrees that it will not take any action or omit to take any action which would result in a delay or hindrance in or prohibition of the orderly flow of rental payments (or the application thereof) as contemplated by this Section 3, and further agrees that if, for any reason whatsoever, such a delay, hindrance or prohibition should occur or be threatened, the Lessee will promptly use its best efforts to eliminate such delay, hindrance or prohibition.

The Lessee agrees to pay the Lessor, as supplemental rent for each Unit becoming subject to this Lease, the amount of any storage, shipping, insurance and interest charges invoiced by any Builder to the Lessor with respect to such Units which are not included in the Purchase Price thereof, it being understood that such charges relate to the storage of such Units by any Builder prior to their delivery and settlement for under the Conditional Sale Agreements and this Lease.

All payments provided for in this Lease shall be made by wire transfer in immediately available funds.

SECTION 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the Closing Date with respect to such Unit and, subject to the provisions of Sections 7, 10 and 13, shall terminate on July 1, 1991.

Anything herein to the contrary notwithstanding, upon the occurrence and during the continuance of an Event of Default hereunder, all rights of the Lessee under this Lease and in and to the Units are subject to the rights of the Assignee under the Conditional Sale Agreements and the Lease Assignment.

SECTION 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with an identifying number as set forth in Annex A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and the Assignee's title to and property in such Units and the rights of the Lessor under this Lease and of the Assignee under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Assignee and the Lessor and filed, recorded, registered and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreements shall have been filed, recorded, registered and deposited and (ii) the Lessee shall have furnished the Assignee and the Lessor an opinion of counsel for the Lessee with respect thereto satisfactory to the Assignee and the Lessor.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee.

SECTION 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Assignee for collection or other charges and will be free of expense to the Lessor, the Beneficiaries, the Assignee and the Investors with respect to the amount of any local, state, federal or foreign taxes or certification, registration or license fees,

assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, shipment or delivery of, or payment for, or transfer of title to, the Units under the terms of this Lease, the Conditional Sale Agreements or the Lease Assignment (all such expenses, taxes, certification, registration and license fees, assessments, charges, fines and penalties being hereinafter called Impositions), all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the other payments to be made by it provided for herein, and from and against which the Lessee agrees to indemnify, protect, defend, save and keep harmless on an after-tax basis the Lessor, the Beneficiaries, the Assignee and the Investors; *provided, however*, that the Lessee's obligation to pay Impositions shall not include (a) any federal income tax payable by the Beneficiaries or the Investors in consequence of the receipt of payments provided for herein, (b) all income taxes or franchise taxes measured by net income based on such receipts imposed on each Beneficiary by the state and city in which such Beneficiary has its principal place of business, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided and (c) to the extent that either Beneficiary receives credit therefor against its federal income tax liability, any foreign income tax; *provided, however*, that in no event shall Lessee be entitled to reduce the amount payable under the first paragraph of Section 3 because of withholding at the source by reason of any taxes, assessments or other governmental charges. The Lessee will also pay promptly all Impositions that may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof or upon the Assignee or the Investors by reason of the Assignee's security title thereto and any Impositions upon or on account of the trust created by the Finance Agreement or the transactions contemplated thereby or the instruments or agreements referred to therein or contemplated thereby, and will keep at all times all and every part of the Units free and clear of all Impositions that might in any way affect the title of the Lessor in and to any Unit or its interests or rights under this Lease; *provided, however*, that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lessor or the Assignee, adversely affect the title, property, interests or rights of the Lessor hereunder or of the Assignee under the Conditional Sale

Agreements, this Lease and the Lease Assignment. If any Impositions shall have been charged or levied against the Lessor, the Beneficiaries, the Assignee or the Investors directly and paid by the Lessor, the Beneficiaries, the Assignee or the Investors, the Lessee shall reimburse the Lessor, the Beneficiaries, the Assignee or the Investors, as the case may be, on presentation of an invoice therefor with interest thereon for the period, if any, from five Business Days after such presentation to the date of such reimbursement at 9½% per annum or at a rate (hereinafter called the Chemical Rate) equal to 3% above the prime rate charged by Chemical Bank to its most creditworthy corporate borrowers, whichever is greater. The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee (and whose fees and expenses shall be paid by the Lessee), a bona fide claim exists for a refund of all or a portion of any Imposition in respect of which the Lessee has made payment to the Lessor, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said independent counsel in order to sustain such claim. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessee shall be entitled to the proceeds of the successful prosecution of any such claim to the extent of payments or reimbursement made by the Lessee pursuant to this Section 6 in respect thereof.

In the event any reports with respect to Impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Assignee in the Units or notify the Lessor and the Assignee of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Assignee.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Imposition or any interest thereon pursuant to this Section 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee. The obligations of the Lessee under this Section 6 constitute a rental obligation.

SECTION 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall become worn out, lost, stolen, destroyed, irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or otherwise, except any requisition for use by the United States Government for a period ending on or prior to the termination of

this Lease (such occurrences being hereinafter called Casualty Occurrences), during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Assignee with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit or Units due and payable on such date, plus a sum equal to the Casualty Value of such Unit or Units as of the date of such payment in accordance with the schedule set out below. Upon (but not prior to) the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee as its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable on an "as is, where is" basis. If the Lessee shall have previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent that such proceeds do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Subject to adjustment pursuant to the provisions of Section 3, Section 9 and Section 17, the Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
January 1, 1976	104.878%	January 1, 1984	67.051%
July 1, 1976	107.676	July 1, 1984	63.922
January 1, 1977	108.303	January 1, 1985	60.660
July 1, 1977	108.602	July 1, 1985	57.490
January 1, 1978	108.955	January 1, 1986	54.400
July 1, 1978	108.973	July 1, 1986	51.250
January 1, 1979	108.666	January 1, 1987	48.110
July 1, 1979	100.677	July 1, 1987	44.970
January 1, 1980	99.694	January 1, 1988	41.910
July 1, 1980	98.400	July 1, 1988	38.910
January 1, 1981	96.789	January 1, 1989	36.050
July 1, 1981	87.533	July 1, 1989	33.250
January 1, 1982	85.354	January 1, 1990	30.300
July 1, 1982	82.915	July 1, 1990	27.130
January 1, 1983	80.245	January 1, 1991	23.790
July 1, 1983	70.039	July 1, 1991 (and thereafter)	20.000

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment, and in any event comparable to those risks insured against by the Lessee in respect of similar equipment owned by it. The benefits of all property insurance shall be payable, so long as the aggregate Conditional Sale Indebtedness shall not have been paid in full, to the Assignee and thereafter to the Lessor, and the Lessee will deliver certificates of insurance evidencing any property insurance effected or in force in accordance with the provisions of this paragraph. With respect to all public liability insurance, the Lessee shall cause each policy to provide, and the insurer issuing such policy to certify to the Assignee and the Lessor, as follows: (1) the Lessor, as owner and lessor of the Equipment, and the Assignee are named as additional insureds as their respective interests may appear, (2) the proceeds of such insurance shall be payable to the Assignee, the Lessor and the Lessee as their respective interests may appear, (3) if the insurer cancels or materially changes such insurance for any reason whatsoever, or the same is allowed to lapse for nonpayment of premium, such cancellation, material change or lapse shall be ineffective (without liability for additional premium on the part of the Lessor or the Assignee) as to the Lessor and the Assignee for 30 days after receipt by the Lessor and the Assignee of notice from such insurer of such cancellation, material change or lapse and (4) in respect of the interest of the Lessor and the Assignee in such policy, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than of the Lessor, the Assignee or the Beneficiaries, as the case may be) and shall insure the interest of the Lessor and the Assignee regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policy.

Any net insurance proceeds resulting from insurance carried by the Lessee or condemnation payments received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences

pursuant to this Section 7. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this Section 7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such net insurance proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee unless an Event of Default or other event (hereinafter called a "Default") which, with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 10. The balance of such net insurance proceeds or condemnation payments shall remain the property of the Lessor. All net insurance proceeds received by the Lessor or the Lessee with respect to a Unit not suffering a Casualty Occurrence shall be applied in payment of the cost of repairing the damage to such Unit, but no such proceeds shall be paid to the Lessee until the Lessor and the Assignee shall have received a certificate signed by an authorized officer of the Lessee to the effect that such damage has been fully repaired; and any balance remaining after the completion of such repairs shall be paid to the Lessee unless an Event of Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 10. Any condemnation payments received with respect to a Unit not suffering a Casualty Occurrence shall be the property of the Lessor.

SECTION 8. *Reports.* On or before March 31 in each year, commencing with the year 1976, the Lessee will furnish to the Lessor, the Beneficiaries and the Assignee an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreements, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as the Lessor or the Assignee may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 5 and the Con-

ditional Sale Agreements have been preserved or replaced. The Lessor and the Assignee shall have the right, by their respective agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Assignee may request during the term of this Lease.

Within 120 days after the close of each of its fiscal years, the Lessee will promptly furnish to the Lessor, the Beneficiaries, the Assignee and the Investors the Lessee's financial statements for such fiscal year (as filed with the Interstate Commerce Commission on Form R-1), including a balance sheet and income statement, prepared in conformity with generally accepted accounting principles or the regulations of the Interstate Commerce Commission applied, in either case, on a basis consistent with that of the preceding year. The Lessee shall also furnish to the Lessor, the Beneficiaries, the Assignee and the Investors as soon as available, and in any event within 45 days after the end of each of the first three quarterly periods of each such fiscal year, copies of the Lessee's Form RE&I and Form CBS quarterly reports to the Interstate Commerce Commission, including a statement of revenue, expense and income and a condensed balance sheet, for such quarterly period. The Lessee will also promptly furnish to the Lessor, the Beneficiaries, the Assignee and the Investors any quarterly, annual or other reports, offering circulars, prospectuses or proxy statements, in final form, required to be filed with the Interstate Commerce Commission or the Securities and Exchange Commission (or any federal agency substituted therefor).

Within 120 days after the close of each of its fiscal years, the Lessee will deliver to the Lessor, the Beneficiaries, the Assignee and the Investors a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during its last fiscal year has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and the Conditional Sale Agreements and that, to the best of his knowledge, the Lessee during such fiscal year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein and in the Conditional Sale Agreements, or if an Event of Default under this Lease or an event of default under the Conditional Sale Agreements shall exist or if an event has occurred which, with notice,

demand and/or lapse of time, would constitute such an Event of Default or event of default, specifying such Event of Default, event of default or event and the nature and status thereof.

SECTION 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to any matter whatsoever, including, without limitation, the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee as its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builders under the provisions of Article 13 of the Conditional Sale Agreements. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all of the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.**

The Lessee agrees, for the benefit of the Lessor and the Assignee, to comply in all respects with all laws (including, without limitation, laws with respect to the use, maintenance and operation of each Unit) of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units; and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; *provided, however*, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in

the opinion of the Lessor or the Assignee, adversely affect the property or rights of the Lessor or the Assignee under this Lease or under the Conditional Sale Agreements. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee.

The Lessee, at its own cost and expense, shall maintain and keep each Unit in good order and repair, normal wear and tear excepted.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Assignee, the Investors and the Beneficiaries from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Trust Agreement, the Conditional Sale Agreements, the Assignments, this Lease or the Lease Assignment, the occurrence of a Default or an Event of Default hereunder or of a default or event of default under the Conditional Sale Agreements, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage, sale or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 14, or the transfer of title to the Units by the Assignee pursuant to any provision of the Conditional Sale Agreements. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 1 of the Finance Agreement, including, but not limited to, any deficiency in respect thereof, the Lessee agrees that each rental payment and each payment in respect of a Casualty Occurrence due thereafter in respect of Units acquired after such deficiency arose shall be increased by such amount as, in the reasonable opinion of the Beneficiaries, will cause the Beneficiaries' net after-tax annual cash flows and net after-tax rates of

return (after giving effect to the payment of such losses, liabilities or expenses) to be at least equal to the net after-tax annual cash flows and net after-tax rates of return (computed on the same assumptions used by the Beneficiaries in originally evaluating this transaction) that would have been available to the Beneficiaries if the Beneficiaries had not been required to pay such losses, liabilities or expenses.

The Lessee agrees to prepare, deliver to the Lessor for execution within a reasonable time prior to the required date of filing and file (or, to the extent permissible, to prepare for and file on behalf of the Lessor directly) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Assignee of the Units or the leasing thereof to the Lessee.

SECTION 10. *Default.* If during the continuance of this Lease one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

(A) default shall be made in payment of any part of the rental provided in Section 3, as adjusted, and such default shall continue for 10 days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreements, and such default shall continue for 30 days after written notice from the Lessor or the Assignee to the Lessee specifying such default and demanding that the same be remedied;

(D) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreements and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(E) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Conditional Sale Agreements under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder or under the Conditional Sale Agreements), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Conditional Sale Agreements shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(2) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the possession and use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may, by its agents, enter upon the premises of the Lessee or any other premises where any of the Units may be located and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatsoever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full

rental period) and also to recover forthwith from the Lessee (a) as damages for loss of the bargain and not as a penalty, whichever of the following sums, with respect to each Unit then subject to this Lease, the Lessor, in its sole discretion, shall specify by written notice to the Lessee: (x) an amount equal to the excess, if any, of the Casualty Value for such Unit, computed as of the rental payment date immediately preceding the Event of Default specified in such notice, over the rental which the Lessor reasonably estimates to be obtainable for such Unit for the remainder of the term of this Lease after discounting such rental semi-annually to present value as of such preceding rental payment date at the rate of 10 $\frac{7}{8}$ % per annum or (y) an amount equal to the excess, if any, of the Casualty Value for such Unit as of such preceding rental payment date over the fair market value of such Unit as of such preceding rental payment date and (b) any damages and expenses, including reasonable attorneys' fees and expenses incurred by the Lessor pursuant to Article 16 of the Conditional Sale Agreements, in addition thereto which the Lessor shall have sustained by reason of the occurrence of an Event of Default or the exercise of the Lessor's remedies in respect thereof.

It is expressly understood and agreed that upon the occurrence of any of the defaults or conditions described in clauses (A) through (E), both inclusive, of the first paragraph of this Section 10, and prior to the time that such default or condition shall constitute an Event of Default hereunder, either the Lessor or the Beneficiaries may make such payment or perform such other act as will cure such default or condition, and the amount of all payments by the Lessor or the Beneficiaries on behalf of the Lessee, plus the amount of all reasonable expenses incurred in connection therewith, together with interest thereon at the Chemical Rate as from time to time in effect or the maximum rate permitted by law, whichever is lower, from the date of expenditure to the date of reimbursement, shall constitute additional rental payable hereunder from the Lessee to the Lessor on demand.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise any of the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The foregoing provisions of this Section 10 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 11. *Return of Units upon Default.* If this Lease shall terminate pursuant to Section 10, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall:

(a) forthwith and in the usual manner (including giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit has been interchanged to return all Units so interchanged) place such Units upon such storage tracks as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as in this Section 11 provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the same. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event that any Unit is not assembled, delivered and stored as hereinabove provided within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 12. *Assignment; Possession and Use; Liens.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term "Lessor" is used in this Lease, it shall apply and refer to the Lessor and each such assignee or successor of the Lessor. Whenever the term "Beneficiary" is used in this Lease, and where the context so requires (including, but not limited to, certain of the provisions of Sections 6 and 10 and the provisions of Section 17), it shall mean each Beneficiary and shall include any affiliated group of corporations which includes a Beneficiary and which files a consolidated federal income tax return.

So long as there shall exist no Default or Event of Default under this Lease or event of default or default by the Lessee under the Conditional Sale Agreements, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreements, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them; *provided, however*, that this sentence shall not be deemed to prohibit any lien attaching to the leasehold interest of the Lessee under this Lease by reason of the existence of an after-acquired property clause in any existing or future mortgage to which the Lessee is a party covering substantially all of its railroad property. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by or liabilities in favor of any person which, if unpaid, might diminish the amount of rents due and payable under Section 3 or might become a

lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Assignee or resulting from claims against the Lessor or the Assignee not related to the ownership of the Units) on or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Assignee or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; *provided, however*, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lessor and the Assignee, adversely affect the title of the Lessor in or to the Units or otherwise adversely affect its rights or the rights of the Assignee under this Lease, the Conditional Sale Agreements or the Lease Assignment; and *provided further*, that this covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so long as not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as there shall exist no Default or Event of Default under this Lease or event of default or default by the Lessee under the Conditional Sale Agreements, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreements; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America or in any way inconsistent with the representations, warranties and covenants set forth in Section 17. The

Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease or the Conditional Sale Agreements.

SECTION 13. *Renewal Options.* Provided this Lease has not been earlier terminated and there exists no Default or Event of Default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all (but not less than all) of such Units then covered by this Lease for an additional three-year period commencing on the scheduled expiration of the original term or such extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond July 1, 2006. In the event that the term of this Lease is extended pursuant to the preceding sentence, the Lessee shall pay rentals at the "Fair Market Rental" (as hereinafter defined) of such Units in semi-annual payments on January 1, and July 1 in each year of such extended term; and all of the other terms of this Lease shall be applicable during any extended term, except that the Casualty Values of the Units shall be calculated by taking into consideration the then Fair Market Value of the Units (both at the beginning and end of the extended term), the Lessor's then after-tax yield requirements and the then prevailing interest rates, but in no event, however, shall such Casualty Values be less than 20% of the Purchase Price of the Units.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length

transaction between an informed and willing buyer (other than a lessee currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Market Rental, as the case may be, of the relevant Units, such value or rental shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

SECTION 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any extended term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver the Units to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and store such Units on such tracks for a period not exceeding six months and cause the same to be delivered, at any time within such six-month period, to any reasonable place directed by the Lessor. The Units shall be returned in the condition in which they are required to be maintained by the Lessee under Section 9, shall be maintained by the Lessee, at its own cost and expense, in such condition during the period of storage provided for in this Section 14 and shall be insured by the Lessee, at its own cost and expense, during such period of storage

in accordance with Section 7; and at the time of such return and during such period of storage shall be kept free and clear of all liens, charges, security interests and encumbrances in accordance with Section 12. The movement and storage of such Units shall be at the expense and risk of the Lessee; and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof set forth in Section 7. During any such storage period, the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Units, may inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the right of inspection granted under this sentence. The assembling, delivery, storage, maintenance and transporting of the Units as in this Section 14 provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event that any Unit is not assembled, delivered and stored as hereinabove provided within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee, or to the Lessee's assignee or nominee, with respect to any Unit so abandoned a bill of sale (without representations or warranties except that such Unit is free and clear of all liens, charges, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor other than the liens, charges, security interests and other encumbrances which the Lessee is obligated to discharge hereunder) for such Unit, and such other documents as may be required to release such Unit from the terms and scope of this Lease

and to transfer title thereto to the Lessee, or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense. The Lessee shall have no liability to the Lessor in respect of any Unit so abandoned by the Lessor; *provided, however*, that this sentence shall not in any way relieve the Lessee of its obligations pursuant to Section 7 to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect or during the storage period provided for in this Section 14.

SECTION 15. *Representations and Warranties of the Lessee.* The Lessee represents and warrants to the Lessor and the Assignee that:

(a) The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Missouri and has the power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Lease and the Conditional Sale Agreements.

(b) The execution, delivery and performance by the Lessee of this Lease and the Conditional Sale Agreements have been duly authorized by all necessary corporate action on the part of the Lessee, do not contravene any law, governmental rule, regulation, judgment, decree or order binding on the Lessee or its properties or the Articles of Incorporation or By-laws of the Lessee and do not and will not contravene the provisions of, or constitute a default under, or result in the creation of any lien upon the Units or any property of the Lessee under, any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which the Lessee is bound.

(c) No consent or approval of, giving of notice to, registration with or taking of any other action by, any state, federal or other governmental commission, agency or regulatory authority, including the Interstate Commerce Commission, is required in connection with the transactions contemplated by this Lease other than the filing and recording referred to in Section 16.

(d) This Lease and the Conditional Sale Agreements have been duly entered into and delivered by the Lessee, and each constitutes a legal, valid and binding agreement of the Lessee enforceable against the Lessee in accordance with its terms.

(e) There are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened before any court, administrative agency, arbitrator or governmental body which will, if determined adversely to the Lessee, materially adversely affect its business,

assets, operations or condition, financial or otherwise, or adversely affect its ability to perform its obligations under this Lease and the Conditional Sale Agreements.

(f) The balance sheets of the Lessee as of December 31, 1974 and 1973 and as of June 30, 1975 delivered to the Lessor, the Beneficiaries and the Investors prior to the execution of this Lease fairly present the financial position of the Lessee as of the dates thereof, and the statements of income, retained earnings and changes in financial position of the Lessee for the two years ended December 31, 1974 and the six months ended June 30, 1975 delivered to the Lessor, the Beneficiaries and the Investors prior to the execution of this Lease fairly present the results of its operations and changes in financial position for the two years and six months ended June 30, 1975, all in conformity with generally accepted accounting principles consistently applied during the periods. Since June 30, 1975, there have been no changes in the business, assets, results of operations or condition, financial or otherwise, of the Lessee which, individually or in the aggregate, have had a material adverse effect upon the Lessee, its financial condition or business prospects.

(g) The Lessee has filed all federal and state income tax returns which are required to be filed, and has paid, or made provision for the payment of, all taxes which have become due pursuant to said returns or pursuant to any assessment received by the Lessee, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided; the United States income tax liability of the Lessee has been finally determined by the Internal Revenue Service and satisfied for all taxable years up to and including the taxable year ended December 31, 1965; and no material controversy in respect of additional income taxes due since said date is pending or, to the knowledge of the Lessee, threatened, except for miscellaneous deficiencies for the years 1966-1971 aggregating \$1,438,640 which are being contested in good faith in litigation pending in the United States Tax Court and as to which adequate reserves have been provided for on the Lessee's books.

(h) The Lessee is not in default in the payment of the principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement under or subject to which any indebtedness for borrowed money has been issued; no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder; and the Lessee is not in violation of any term of any material agreement, lease of real or personal property or other instrument.

(i) This Lease creates a valid leasehold interest in the Units.

(j) Each Unit will have a useful life of not less than 20 years and will have a residual value at the expiration of the original term of this Lease of not less than 20% of the Purchase Price thereof (after subtracting from such value any cost to the Lessor for delivery of possession of the property to the Lessor at the end of the term of this Lease and without including in such value any increase or decrease for inflation or deflation during such term).

SECTION 16. *Recording.* The Lessee, at its own expense, will cause this Lease, the Lease Assignment, the Conditional Sale Agreements and the Assignments, and any amendments and supplements hereto or thereto, and any further assignments hereof and thereof, to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, and the Lessee will undertake the filing, registering, depositing and recording required of the Lessor under the Conditional Sale Agreements and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will refile, re-register, re-deposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Assignee for the purpose of proper protection, to their satisfaction, of the Lessor's and the Assignee's respective interests in the Units, or for the purpose of carrying out the intention of and their respective rights under this Lease, the Lease Assignment, the Conditional Sale Agreements and the Assignments; and the Lessee will promptly furnish to the Lessor and the Assignee evidences of all such filing, registering, depositing and recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and the Assignee. This Lease and the Conditional Sale Agreements shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 17. *Federal Income Taxes.* This Lease and the Conditional Sale Agreements have been entered into on the assumptions that (A) the Beneficiaries, as the beneficial owners of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (1) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code (hereinafter called the ADR Deduction) (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 72-10, 1972-1 C.B. 721, for property in Asset Guide-

line Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to the Lessor, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under section 1012 of the Code (hereinafter called the Basis), (d) taking into account a salvage value, after the reduction allowed by section 167(f) of the Code, of zero and (e) having the first taxable year of the Lessor (ending December 31, 1975) be at least five months in duration; (2) deductions with respect to interest payable under the Conditional Sale Agreements pursuant to section 163 of the Code (hereinafter called the Interest Deduction); and (3) the 10% investment credit with respect to 100% of the Basis of the Units (hereinafter called the Investment Credit) pursuant to section 38 and related sections of the Code and (B) all amounts includible in gross income by the Lessor or the Beneficiaries with respect to this Lease will be treated as income from sources within the United States.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor or the Beneficiaries, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor, and will on written request by the Lessor provide the Lessor with, such records as will enable the Beneficiaries to determine whether they are entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units and (B) to treat amounts includible in gross income with respect to this Lease as income from sources within the United States.

The Lessee represents and warrants that (i) all the Units constitute property the entire Basis of which qualifies for the 10% Investment Credit under section 50 of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 proper-

ty" within the meaning of section 48(b) of the Code, and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) none of the Units will be "used predominantly outside the United States" within the meaning of section 48(a)(2) of the Code; and (v) all items includible in gross income by the Lessor or the Beneficiaries with respect to this Lease are entitled to treatment as income from sources within the United States.

If (A) for any reason whatsoever (other than for the reasons set forth below) all or any part of the ADR Deduction, the Interest Deduction or the Investment Credit with respect to any Unit shall be unavailable in computing each of the items of income, gain, loss, deduction or credit of the Beneficiaries or (B) the Lessor or either or both of the Beneficiaries shall determine that all amounts includible in gross income with respect to this Lease cannot be treated as income from sources within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, then the rental applicable to such Unit set forth in Section 3 shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased by such amount as shall be required, in the reasonable opinion of the Beneficiaries, to cause each Beneficiary's net after-tax annual cash flow and net after-tax rate of return to be at least the same as such net after-tax annual cash flow and net after-tax rate of return would have been had the ADR Deduction, the Interest Deduction and the Investment Credit been wholly available and had the Lessor and the Beneficiaries been entitled to treat all amounts includible in gross income with respect to this Lease as income from sources within the United States; *provided, however*, that such rental shall not be so increased to the extent that the ADR Deduction, the Interest Deduction or the Investment Credit with respect to such Unit is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Lessor the amounts stipulated pursuant to Section 7;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, a voluntary disposition by the Lessor of any interest in such Unit or a

voluntary reduction by the Lessor of its interest in the rentals from such Unit under this Lease (except pursuant to an assignment of this Lease to the Assignee) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of either Beneficiary to claim the ADR Deduction, the Interest Deduction or the Investment Credit on its income tax return for the appropriate year, unless such Beneficiary shall have received an opinion of independent tax counsel to the effect that such Beneficiary is not entitled to claim the ADR Deduction, the Interest Deduction or the Investment Credit; or

(iv) the failure of either Beneficiary to have sufficient liability for federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction.

If the federal income tax rate for corporations in effect on the date hereof is changed, or a law is in effect for a subsequent change, or a law is proposed for a subsequent change and such proposal is later enacted, whether such change is temporary or permanent, on or before December 31, 1976, then the Lessee shall indemnify the Lessor for any such federal income tax rate change throughout the life of this Lease by increasing the rental set forth in Section 3, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, by such amount as shall be required, in the reasonable opinion of the Beneficiaries, to cause each Beneficiary's net after-tax annual cash flow and net after-tax rate of return to be at least the same as such net after-tax annual cash flow and net after-tax rate of return would have been had there been no change in the federal income tax rate for corporations. If for any reason whatsoever all or part of the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease (hereinafter called Additional Expenditures) made by the Lessee under and pursuant to the terms of this Lease or otherwise is required to be included in the gross income of the Lessor or any Beneficiary for federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals for the Unit set forth in Section 3 shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice to the Lessor pursuant to the following sentence that such inclusion in the Lessor's or any Beneficiary's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of such Beneficiary (after taking into account any present or future tax benefits that such Bene-

ficiary reasonably anticipates it will derive from its additional investment in the Units by reason of such inclusion, including, without limitation, any current deductions, future depreciation deductions and investment tax credit), cause such Beneficiary's net after-tax annual cash flow and net after-tax rate of return (calculated on the same basis as used by such Beneficiary in originally evaluating this transaction) to equal the net after-tax annual cash flow and net after-tax rate of return that would have been realized by such Beneficiary if the cost of such Additional Expenditures had not been includible in such Beneficiary's gross income. The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor or any Beneficiary gives the Lessee written notice that the Lessor's or any Beneficiary's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which are required to be included in the gross income of the Lessor or any Beneficiary for federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor and the Beneficiaries describing such Additional Expenditures in reasonable detail.

The recomputation of the rental payable by the Lessee pursuant to the preceding paragraph will be based on (i) the same assumptions used by the Beneficiaries in originally evaluating this transaction, including the assumptions that any taxable income generated by this transaction is subject to tax at an effective rate of 54.686% and that any net loss generated by this transaction is a tax benefit against taxes imposed at an effective rate of 50%, and (ii) in determining the extent to which either of the Beneficiaries receives credit for any foreign tax against its federal income tax liability (such determination by each Beneficiary being final and conclusive), on the further assumption that credit is received for all other foreign taxes claimed as credits for the taxable year in question before credit is received for any foreign taxes indemnified under this Lease which are claimed as credits for such year.

In the event a claim shall be made against the Lessor or the Beneficiaries which, if successful, would result in payment by the Lessee of increased rental pursuant to the immediately preceding paragraph, and if, in the opinion of the Lessor's independent tax counsel (hereinafter called Counsel), a bona fide defense to such claim exists, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other ap-

appropriate action deemed reasonable by Counsel and the Lessee's independent tax counsel in order to sustain such defense; *provided, however*, that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses that may be entailed therein and shall have furnished the Lessor such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax, interest or penalty with respect to such claim (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such increased rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount which, when reduced by any increase in the Lessor's or the Beneficiaries' income tax liability or liabilities resulting from the Lessor's receipt of such additional rental, will equal the amount of all interest and penalty paid by the Lessor or the Beneficiaries in respect of such final determination, together with interest thereon from the date such payment is made by the Lessor or the Beneficiaries to the date the Lessee reimburses the Lessor therefor at the Chemical Rate as in effect on the date of such final determination. If the Lessor or the Beneficiaries make such Tax Payment and then sues for a refund, such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount which, when reduced by the increase in the Lessor's or the Beneficiaries' income tax liability or liabilities resulting from the Lessor's receipt of such additional rental, will equal the amount of all interest and penalty paid by the Lessor or the Beneficiaries included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, (A) the rental payable by the Lessee to the Lessor shall be adjusted by such amount as shall be required, in the reasonable opinion of the Beneficiaries, and pursuant to the assumptions set forth in the last sentence of the immediately preceding paragraph, to cause each Beneficiary's net after-tax annual cash flow and net after-tax rate of return to be at least the same as such net after-tax annual cash

flow and net after-tax rate of return would have been if such Tax Payment had not been made (or such adjustment shall be made proportionately if the final determination is partly in favor of and partly adverse to the Lessor) and such adjusted rental shall be payable by the Lessee on the rental payment date next succeeding such final determination and thereafter, and (B) the Lessor shall pay to the Lessee an amount which, when reduced by the tax benefit to the Lessor resulting from the payment of such amount, will equal the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest on such refunded penalty and interest paid to the Lessor by the government, promptly upon receipt thereof.

In the event that the Lessee shall pay all or any portion of any installment of rental prior to the date upon which such payment is herein required to be made, the Lessee shall pay to the Lessor an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or subdivision of any taxing authority thereof, shall be equal to the excess of (A) the taxes and other charges payable by the Lessor and the Beneficiaries as a result of the receipt of such installment of rental over (B) the taxes and other charges that would have been payable by the Lessor and the Beneficiaries had such installment of rent been paid by the Lessee on the date upon which such payment is herein required to be made.

In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in Section 7 shall be adjusted accordingly.

The Lessor and the Beneficiaries are entitled, but are not required, to request a ruling from the Internal Revenue Service (hereinafter called the Ruling) to the effect, among other things, that this Lease is a true lease, that the Lessor is the owner of the Units and that the Beneficiaries have the right to claim the ADR Deduction, the Interest Deduction and the Investment Credit. The Lessee will furnish such documents, records and representations, including, but not limited to, evidence of the useful life and residual value of the Units sufficient to support the matters claimed in any request for the Ruling, as shall be deemed necessary and appropriate for such request by the Lessor. The Lessee shall join in such request. If the Ruling received by the Lessor and the Beneficiaries

requires the cost of any Additional Expenditures (as hereinafter defined) made by the Lessee to be included in the gross income of the Lessor or any Beneficiary, the Lessor shall, upon request and at the expense of the Lessee, seek a modification of the aforementioned requirement.

The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this Section 17 shall survive the expiration or other termination of this Lease.

SECTION 18. *Interest on Overdue Rentals.* Anything herein to the contrary notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest on the overdue rentals and other obligations for the period of time during which they are overdue at the greater of 10 $\frac{7}{8}$ % per annum and the Chemical Rate as from time to time in effect or such lesser amount as may be legally enforceable.

SECTION 19. *Notices.* Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally or if mailed, certified mail postage prepaid, at the following specified addresses:

(a) To the Lessor, 231 South LaSalle Street, Chicago, Illinois 60693, attention of Corporate Trust Department;

(b) To the Lessee, 3253 East Trafficway, Springfield, Missouri 65802, attention of Vice President-Finance, with a copy to 906 Olive Street, St. Louis, Missouri 63101, attention of Secretary;

(c) To Chemical Bank, 20 Pine Street, New York, New York 10015, attention of Manager, Wholesale Leasing;

(d) To International Paper Equipment Leasing Corporation, 220 East 42nd Street, New York, New York 10017, attention of Mr. Kevin Coyne;

(e) To the Assignee, 231 South LaSalle Street, Chicago, Illinois 60693, attention of Corporate Trust Department;

or to such other address as may have been furnished in writing by any of the foregoing persons to the other persons named above.

SECTION 20. *Severability; Effect and Interpretation of Lease.* Any provision of this Lease prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Lessee to the full extent permitted by law, to the end that this Lease shall be enforced as written.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. All references herein to Sections, paragraphs, clauses and other subdivisions refer to the designated Sections, paragraphs, clauses and other subdivisions of this Lease; and the words "herein," "hereof," "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Section, paragraph, clause or other subdivision hereof.

SECTION 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Lease and the Lease Assignment as shall be conferred by the laws of the several jurisdictions in which this Lease or the Lease Assignment shall be filed, recorded, registered or deposited.

SECTION 22. *Further Assurances.* The Lessee agrees that at any time and from time to time, after the execution and delivery of this Lease, it shall, upon request of the Lessor, execute and deliver such further documents and do such further acts and things as the Lessor may reasonably request in order fully to effect the purposes of this Lease, including, but not limited to, any and all information necessary to enable the Lessor to properly complete and file any and all state or political subdivision thereof income tax returns in connection herewith. Without limiting the generality of the foregoing, the Lessee shall cause this Lease to be kept, and/or any UCC-1's or comparable forms to be filed and recorded, in such places as the Lessor may reasonably request in order to perfect and preserve the Lessor's rights hereunder and the rights of the Assignee under the Conditional Sale Agreements and the Lease Assignment.

SECTION 23. *Modification, Waiver and Consent.* Any modification or waiver of any provision of this Lease, or any consent to any departure by the Lessee therefrom, shall not be effective in any event unless the same is in writing and signed by the Lessee and the Lessor, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on the Lessee in any event not specifically required of the Lessor hereunder shall not entitle the Lessee to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

SECTION 24. *Binding Effect.* This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of the Lessee and the Lessor.

SECTION 25. *Use of Units Beyond Lease Term.* If the Lessor permits the use of any Unit beyond the term of lease with respect thereto, the obligations of the Lessee hereunder shall continue; *provided, however,* that such permissive use shall not be construed as a renewal of such term of lease nor as a waiver of any right or continuation of any obligation of the Lessor hereunder, and the Lessor may take possession of such Unit at any time upon demand.

SECTION 26. *Rights, Remedies and Powers.* Each and every right, remedy and power granted to the Lessor hereunder shall not be exclusive but shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by the Lessor from time to time concurrently or independently and as often and in such order as the Lessor may deem expedient. Any failure or delay on the part of the Lessor in exercising any such right, remedy or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect the Lessor's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power. In the event the Lessor shall have proceeded to enforce any such right, remedy or power and such proceeding shall have been determined adversely to the Lessor, then in such event the Lessee and the Lessor shall be restored to their former positions and the rights, remedies and powers of the Lessor shall continue as if no such proceeding had been taken.

SECTION 27. *Execution.* This Lease may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Lease is dated as of July 15, 1975 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Lease to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
as Trustee

(CORPORATE SEAL)

By
Second Vice President

Attest:

.....
Trust Officer

ST. LOUIS-SAN FRANCISCO RAILWAY
COMPANY

(CORPORATE SEAL)

By
Vice President

Attest:

.....
Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this day of September, 1975, before me personally appeared, to me personally known, who, being by me duly sworn, says that he is a Second Vice President of Continental Illinois National Bank and Trust Company of Chicago, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss

On this day of September, 1975, before me personally appeared, to me personally known, who, being by me duly sworn, says that he is a Vice President of St. Louis-San Francisco Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires

Annex A
Lease Railroad Equipment

DESCRIPTION OF UNITS

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Current Price per Unit</u>	<u>Estimated Total Purchase Price</u>	<u>Builder</u>
100-ton open gondola cars	200	SL-SF 66000- 66199	\$27,000	\$5,400,000	Pullman Incorporated (Pullman-Standard division)
100-ton open hopper cars	200	SL-SF 87600- 87799	26,000	5,200,000	Greenville Steel Car Company

Assignment of Lease and Agreement

Dated as of July 15, 1975

BETWEEN

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,

as Trustee

AND

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,

as Agent

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 15, 1975 between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the Vendee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with CHEMICAL BANK and INTERNATIONAL PAPER EQUIPMENT LEASING CORPORATION (hereinafter called the Beneficiaries), and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Vendee, ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY (hereinafter called the Lessee), the Beneficiaries and the Investors named in Annex A thereto (hereinafter called the Investors).

WHEREAS, the Vendee and the Lessee have entered into Conditional Sale Agreements dated as of the date hereof (hereinafter called the Conditional Sale Agreements) with PULLMAN INCORPORATED (PULLMAN-STANDARD DIVISION) and GREENVILLE STEEL CAR COMPANY, respectively (hereinafter called the Builders), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the respective Conditional Sale Agreements (hereinafter called the Equipment);

WHEREAS, each Builder and the Assignee have entered into an Agreement and Assignment dated as of the date hereof (hereinafter called the Conditional Sale Assignments) assigning to the Assignee the right, security title and interest of such Builder under its respective Conditional Sale Agreement as security for the payment of the aggregate Conditional Sale Indebtedness (as defined in the Conditional Sale Agreements);

WHEREAS, the Vendee and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment; and

WHEREAS, in order to provide further security for the payment of the aggregate Conditional Sale Indebtedness and as an inducement to the Investors to invest in the Conditional Sale Indebtedness, the Vendee has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Assignee;

NOW, THEREFORE, THIS ASSIGNMENT OF LEASE AND AGREEMENT (hereinafter called this Assignment) WITNESSETH That, in consideration of the

sum of One Dollar and other good and valuable consideration paid by the Assignee to the Vendee, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

SECTION 1. The Vendee hereby assigns, transfers and sets over unto the Assignee, its successors and assigns: (i) all the Vendee's right, title and interest as lessor under the Lease, together with all rights, powers, privileges and other benefits of the Vendee as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Vendee under or pursuant to the provisions of the Lease, whether as rent, casualty payment, termination payment, indemnity, liquidated damages or otherwise (other than payments due the Vendee or the Beneficiaries pursuant to Sections 6, 7 (with respect to public liability insurance), 9 and 17 which shall be made directly to the Vendee) (such moneys being hereinafter called the Payments), it being expressly understood and agreed by the Assignee that such assignment of the Payments shall not thereby increase the amount of funds applicable to the payment or prepayment of the Conditional Sale Indebtedness or interest thereon as provided in the last paragraph of Article 4 of the Conditional Sale Agreements; and (ii) the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to do any and all other things whatsoever which the Vendee as lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment and transfer, the Vendee hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of or as attorney hereby irrevocably constituted for the Vendee as lessor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Lessee with the terms and agreements on its part to be performed under the Lease.

The Assignee agrees to accept any Payments made by the Lessee for the account of the Vendee as lessor pursuant to the Lease. To the extent received, the Assignee shall apply such Payments to satisfy the obligations of the Vendee under the Conditional Sale Agreements, subject to the limitations contained in the last paragraph of Article 4 of the Conditional

Sale Agreements, and any balance shall be paid, by wire transfer of immediately available funds, to and retained by the Beneficiaries, unless and until the Vendee shall otherwise direct the Assignee in writing. If the Assignee shall not receive any rental payment under the first paragraph of Section 3 of the Lease when due, the Assignee shall forthwith notify the Vendee at the address set forth in the Lease.

So long as an Event of Default under the Lease or an event of default under the Conditional Sale Agreements has not occurred and is not then continuing, the Assignee will not exercise or enforce, or seek to exercise or enforce, or avail itself of any of the rights, powers, privileges, authorities or benefits hereby assigned, except the right to receive and apply the Payments as provided in this Section 1, the right to give any notice in case of the occurrence of a Default under the Lease or a default under the Conditional Sale Agreements and the right to recover directly from the Lessee amounts owing under the Lease directly to the Assignee and/or the Investors. Nothing in this Assignment shall be construed to prohibit the Vendee or the Beneficiaries from proceeding directly against the Lessee for payments due the Vendee or the Beneficiaries for indemnification pursuant to Sections 6, 9 and 17 of the Lease, proceeding directly against any insurer with respect to any public liability insurance maintained by the Lessee pursuant to Section 7 of the Lease or proceeding directly against the Lessee for specific performance of the Lessee's covenant to maintain the Units in the manner required by such Section 9. The representations, undertakings and agreements herein made on the part of the Vendee are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) in the same manner and to the same extent as set forth in Article 21 of the Conditional Sale Agreements.

SECTION 2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee shall be and remain enforceable by the Lessee only against the Vendee or persons other than the Assignee.

SECTION 3. To protect the security afforded by this Assignment, the Vendee further agrees as follows:

(a) the Vendee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Vendee; and, without the express written consent of the Assignee, the Vendee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the times and place specified therein, or enter into any agreement amending, modifying or terminating the Lease; and the Vendee agrees that any amendment, modification or termination thereof without such consent shall be void;

(b) at the Vendee's sole cost and expense (subject to Articles 4 and 21 of the Conditional Sale Agreements), the Vendee will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Vendee under the Lease if such action or proceeding shall arise out of the willful misconduct or reckless disregard of duty of the Vendee; and

(c) should the Vendee fail to make any payment or to do any act which this Assignment requires the Vendee to make or do, then the Assignee may (but shall not be obligated), after first making written demand upon the Vendee and affording the Vendee a reasonable period of time within which to make such payment or do such act, and without releasing the Vendee from any obligation hereunder or under the Lease, make such payment or do such act in such manner and to such extent as the Assignee may deem necessary to protect the security hereof, including, without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee and also the right to perform and discharge each and every obligation, covenant and agreement of the Vendee contained in the Lease. In exercising any such powers, the Assignee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Vendee will reimburse the Assignee for such costs, expenses and fees.

SECTION 4. Upon the full discharge and satisfaction of all the Vendee's obligations under the Conditional Sale Agreements, this Assignment and all rights herein assigned to the Assignee shall terminate, and all estate, right, title and interest of the Assignee in and to the Lease shall revert to the Vendee.

SECTION 5. The Vendee represents and warrants that (a) the Trust Agreement, the Conditional Sale Agreements, the Conditional Sale Assign-

ments, the Lease and this Assignment have each been duly authorized, executed and delivered by the Vendee and each is and will remain the valid and binding obligation of the Vendee and, in the case of the Conditional Sale Agreements and the Lease, is enforceable in accordance with its respective terms; (b) the Vendee has not executed any other assignment of the Conditional Sale Agreements or the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, charges, security interests or other encumbrances (except this Assignment) created or suffered by any act or omission on the part of the Vendee (other than any act or omission in respect of which the Lessee has assumed responsibility under the Lease), and the Vendee has not received any advance rental payments under the Lease; and (c) to the best knowledge of the Vendee, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof and there has not occurred on or prior to the date hereof any Default or Event of Default as defined in the Lease.

SECTION 6. The Vendee agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Lease for any installment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Vendee will indemnify, protect and hold harmless the Assignee from and against all expense (including without limitation counsel fees), loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever claimed by the Lessee arising out of a breach by the Vendee of any obligation under the Lease or arising by reason of any other indebtedness or liability at any time owing to the Lessee from the Vendee. Any and all such obligations shall be and remain enforceable against and only against the Vendee and shall not be enforceable against the Assignee or any person or persons in whom any of the rights of the Vendee under the Lease shall vest by reason of this assignment or of successive assignments or transfers.

SECTION 7. The Assignee may assign all or any of its rights under the Lease, including the right to receive any Payments due or to become due thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving by the Assignee of written notice of such assignment to the Vendee and by the Vendee of the written notice required in Section 12 of the Lease, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Vendee hereby agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be, including the execution and acknowledgment of any instrument necessary or appropriate to file, record, register or deposit this Assignment or notice hereof.

SECTION 9. The Vendee shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Assignee at its address set forth in Article 20 of the Conditional Sale Agreements, or at such other address as the Assignee shall designate in writing. The Assignee shall give immediate notice by telegram, promptly confirmed in writing, to the Vendee and the Beneficiaries of any default by the Lessee described in clause (A) of Section 10 of the Lease and of any other default by the Lessee described in such Section 10 of which the Assignee has actual knowledge.

SECTION 10. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of the Lease or this Assignment as shall be conferred by the laws of the several jurisdictions in which the Lease or this Assignment shall be filed, recorded, registered or deposited.

SECTION 11. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of July 15, 1975 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO.

as Trustee

(CORPORATE SEAL)

By
Second Vice President

Attest:

.....
Trust Officer

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,

as Agent

(CORPORATE SEAL)

By
Second Vice President

Attest:

.....
Trust Officer

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this day of September, 1975, before me personally appeared
....., to me personally known, who, being by me duly
sworn, says that he is a Second Vice President of Continental Illinois Na-
tional Bank and Trust Company of Chicago, that one of the seals affixed
to the foregoing instrument is the corporate seal of said corporation and
that said instrument was signed and sealed on behalf of said corporation,
as Trustee, by authority of its By-laws, and he acknowledged that the
execution of the foregoing instrument was the free act and deed of said
corporation.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this day of September, 1975, before me personally appeared
....., to me personally known, who, being by me duly
sworn, says that he is a Second Vice President of Continental Illinois Na-
tional Bank and Trust Company of Chicago, that one of the seals affixed
to the foregoing instrument is the corporate seal of said corporation and
that said instrument was signed and sealed on behalf of said corporation,
as Agent, by authority of its By-laws, and he acknowledged that the
execution of the foregoing instrument was the free act and deed of said
corporation.

.....
Notary Public

(NOTARIAL SEAL)

My commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of July 15, 1975.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

By
Vice President